

**Litchfield Planning Board**

**October 6, 2009**

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Minutes approved 11/3/09

**Members present:**

Alison Douglas, Chairman  
Edward Almeida, Vice Chairman  
Marc Ducharme, Clerk  
Carlos Fuertes  
Steve Perry, Selectmen's Representative

**Members not present:**

Jayson Brennen  
Leon Barry  
John Miller, Alternate

**Also present:**

Joan McKibben, Administrative Assistant  
Steve Wagner, Nashua Regional Planning Commission, Circuit Rider

**AGENDA**

**1. ROLLING ACRES III BONDING - ANDREW PROLMAN**

**2. OPEN SPACE SUBDIVISION**

**3. RESIDENTIAL DRIVEWAY REGULATIONS/PERMIT**

**4. DRAFT OF CTAP FUNDED ORDINANCE**

**5. OLD STAGE CROSSING - ESCROW FUNDS RELEASE**

**ANY OTHER BUSINESS**

- Approval of Minutes
- Correspondence

Chairman Douglas called the meeting to order at 7:08 p.m.

**1. ROLLING ACRES PHASE III**

Attorney Andrew Prolman, representing Cutler & Page Liability Company, came before

1  
2 the Board. He handed out an informational packet to the members and went on to talk  
3 about bonding of Horizon Drive, Phase III.  
4

5 Att. Prolman: What I want to ask the Board is what I am handing to you is still valid and  
6 acceptable. I was before the Board about two months ago talking about the overall status  
7 of the Rolling Acres project and that there was a lender now in place to build out seven  
8 (7) lots of Phase III. They are getting ready to go forward. When I was here last, I said we  
9 are going to post the \$75,000 (restoration bond) as the Board agreed to sometime ago  
10 (2006) and everybody kind of looked at me what are you talking about because the cost  
11 of the road to build Phase III, the road, is one half million bucks. It is in the back of your  
12 packet...which you typically have to post. But I came to the Board in 2006 and I said  
13 according to the regulations there is some waiver...with respect to bonding but what we  
14 would like to post is a restoration bond instead of a full road bond amount for the project.  
15 We went back and forth at that time and we came to a figure of \$75,000 for a restoration  
16 bond and because there was some question when I was here a month or two ago, I just  
17 wanted to bring it to the Board and make sure that is okay so I can turn around tomorrow  
18 morning and say go call the preconstruction meeting and get going. The \$75,000 is an  
19 estimate if my client starts building, or the road builder walks away from the project what  
20 is it going to cost to loam everything back over - seed it and stabilize everything so that it  
21 doesn't look like a bomb went off in that part of the world. Lou Caron (L.C. Engineer)  
22 came up with a figure of \$45,000 two years ago for a restoration bond...then the Board  
23 came upon \$75,000 which was acceptable. All I am asking the Board tonight if that is  
24 still acceptable to this Board so I can tell my folks that they can post that and hopefully  
25 get that road built this fall.  
26

27 Mr. Perry: The way I read this is we agreed on this and your agreement was to build to  
28 the base course and no building permits would be pulled until the base course is  
29 complete. Right?  
30

31 Mr. Prolman: That is my understanding of what they plan to do.  
32

33 Mr. Perry: And at that point you would put a bond on the rest of the completion of the  
34 road before you pull a building permit.  
35

36 Att. Prolman: Yes, because the way Litchfield's bonding...the acceptable sureties for  
37 Litchfield are very tough to do. They are cash, cashier's check, a surety bond, irrevocable  
38 letter of credit and I have to sock away 1/2 million dollars with the Town, or I have to sock  
39 away 1/2 million with the bank. Then that money is just sitting there and then I have to pay  
40 a contractor. So, it is money sitting idle. So, we would post a \$75,000 bond, build the  
41 base course and then post the balance of the work to be done while at that point it is not  
42 expensive. It is far more manageable.  
43

44 Attorney Prolman further stated that if the Town would accept a performance bond  
45 (similar to an insurance bond) that he would not be making this request.

1  
2 It was asked how long before the project would start. Att. Prolman: When the shovel first  
3 goes into the ground. I am told it is a three to four week job. It is getting the shovel in the  
4 ground; it is an easy road to build.

5  
6 Mr. Wagner said that there is no language in the regulation that allows for a restoration  
7 bond. To this, Att. Prolman referenced Appendix A under bonding back in 2006.  
8 Attorney Prolman said that the regulation does allow for phasing and that the request for  
9 a restoration bond was originally made in February 2006 before the plan was recorded at  
10 the Registry.

11  
12 Mr. Wagner: I do not have a problem. I just want to make sure it is in the regulations  
13 because the Selectmen are in charge; they are the authorities of the bond ultimately.

14  
15 Mr. Wagner indicated his understanding of a performance bond and restoration bond is a  
16 restoration is returning the site back to a stable state whereas a performance bond insures  
17 that the road work would get done.

18  
19 Mr. Perry: The issue is the site has already been cleared. Let's just say it is less than  
20 attractive right now. So, if a restoration bond...actually don't you have to post that in  
21 order to clear the trees? Before you clear the trees?

22  
23 Att. Prolman: In a perfect world somebody probably should have.

24  
25 Mr. Perry: But it did not happen. So, this is what we are stuck with right now. So, if they  
26 go on and post a restoration bond and they go in and stump the whole area and walk away  
27 instead of seeing stumps, you are going to be able to pull the bond, reloom it, reseed it  
28 and have it look clean. So, to me, it is an advantage right now. Best case scenario they  
29 build a road, they get the new bond for the completion of the road, they start pulling the  
30 permits and they start building homes and it gets to completion which I can guarantee  
31 you Mr. Tyler Matthew (an abutter) will be extremely happy to see a road get put in  
32 there. So, right now based on the fact there was no bond to clear the trees, to promote this  
33 I see an advantage to it.

34  
35 Attorney Prolman further stated that once the bond is posted then there would be a  
36 preconstruction meeting, the outstanding fees paid and the \$10,000 escrow has to be paid.

37  
38 Mrs. McKibben: In the meeting on October 2007, Lou Caron said that the construction of  
39 Weatherstone was done without Town oversight; so, the drain pipes will need to be  
40 photographed with a video camera with the Town consultant present.

41  
42 Att. Prolman said he would relay that to his client.

43  
44 Mrs. McKibben: Without that \$10,000, he can't move.  
45

1  
2 Att. Prolman: They know that. They are aware of that. I got your email and forwarded it  
3 along.

4  
5 Mr. Perry: Can you also keep them aware of the fact that they continue to replenish the  
6 escrow account or the project may be shut down.

7  
8 Att. Prolman: The developer is aware that Phase IV is at risk because of the outstanding  
9 escrow account. They owe the Town a lot of money - \$9,000 or \$10,000.

10  
11 Mr. Perry: I understand that IV is not III and we are only dealing with III. I do not want  
12 to see us get about half way with this and see the escrow account go back down to  
13 nothing and have bills coming in and just trying to hurry up and get the road finished.  
14 You know what I am saying.

15  
16 Att. Prolman: I do. I do not know what the regulations say on that.

17  
18 Mr. Perry: For example once it hits \$5,000, it is supposed to be replenished.

19  
20 Attorney Prolman told the Board that all these issues would be conveyed to his client.

21  
22 Although Lou Caron had recommended \$45,000 back in 2006, Mr. Perry is confident that  
23 the \$75,000 bond would be sufficient.

24  
25 Mr. Almeida **MOTIONED** that we proceed with Rolling Acres III with the original  
26 motion dated back to April 4, 2006, Rolling Acres III restoration bond for Horizon Drive  
27 1400 feet and Weatherstone Drive for a total of 1700 feet in the amount of \$75,000 and  
28 "Mr. Brennen had amended the motion to say the work within the right-of-way and  
29 within the approved easements of those lots". Mr. Perry seconded. Motion carried 5-0-0.

30  
31 **2. OPEN SPACE**

32  
33 Attorney Andy Prolman, also a resident, was present for the discussions. Marc Ducharme  
34 provided a revised Open Space Development Draft 2 and reviewed the changes with the  
35 Board.

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37 3. Standards and Conditions: Item 3. Outdoor recreation. Mr. Ducharme asked what the  
38 Board wants to allow in the open space or just leave as a natural forest area. Mr. Wagner  
39 said that it should be on a case by case basis depending on the land. Mr. Wagner further  
40 stated that usually open space is existing in its natural state such as light recreation:  
41 hiking, picnic areas and no buildings. The Board agreed that it would like to see more  
42 natural undisturbed areas.

43  
44 Item 3(b) It was agreed to eliminate. (c) Maybe allow some buildings.

D. Maximum Density

2. An applicant shall provide a conventional subdivision lay out plan in order to establish the baseline density for the parcel. This plan shall be referred to as the Yield Plan and would be approved by the Planning Board.

Attorney Prolman: One community I work in requires a yield plan on a conventional lay out so you set the number of units...but the yield plan specifically excludes any waivers from the subdivision regulations. If you couldn't get to a lot without a waiver of an 8% road grade, I can't present a yield plan that includes waivers from the subdivision regulations. It is something to think about if you want the yield plan to be based straight on the ordinances and regulations as written without any variances or waivers.

Mr. Wagner: I am thinking along with open space conservation subdivisions and I am also thinking in the back of my mind inclusionary zoning and you are saying no yield greater than the standard subdivision. Maybe in a situation if you are allowing workforce then you allow a higher density under conditional use permit or something but that would be totally separate and it would not be written into this ordinance but if the Board considered a higher density, it might be written into the inclusionary zoning as an option and conservation subdivisions as one method.

Mr. Ducharme: To allow additional residential units.

Mr. Wagner: Yes. Maybe allow duplexes in the space that you allow singles.

E.1. Access - This needs to be reworded.

Mr. Ducharme will check the Older Persons regulation to see what the Board had approved for front distances.

F. Uses Restricted - As to manufactured housing, Att. Prolman suggested adding "no open space development shall include manufactured housing as defined in RSA 674:31 and 31-a " and allow modular or pre-manufactured homes. Those are acceptable.

H. Parking - Mr. Ducharme said he is trying to say any recreational area should have access from the roads and a few parking spots. This needs to be rewritten. This is to allow parking areas for the recreational areas so that people do not have to park on the street. He is still working on the number of parking spots. It was also suggested that the area be paved.

I. Emergency Vehicle Access: Emergency vehicles need to have access to open space and any structures in the open space.

J. Use of Common Land/Open Space - It was agreed to strike playgrounds, play fields

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2 and golf courses. Attorney Prolman agreed but recommends leaving passive recreation or  
3 conservation lands and other recreational uses as approved by the Planning Board  
4 because someone may want to put in a tot lot.

5  
6 K. Protection of Common Land - Talk went on as to ownership of the open space area. If  
7 the Town owned the open space, would it also maintain it, mow it, etc. The intent of the  
8 ordinance is to make the roads town-owned. It was said the roads could be town-owned  
9 but the open space maintained and owned by the residents, maybe an Association. Mr.  
10 Almedia suggested striking playgrounds and playfields because you don't want a soccer  
11 field thus creating a parking situation. It was suggested talking to the Recreation  
12 Commission to see how they feel about open space owned by the Town.

13  
14 Attorney Prolman pointed out that the Planning Board does not have the authority to  
15 accept land on behalf of the Town without the Selectmen's approval and/or Town  
16 Meeting approval. On the other hand, if there is an association, then they are in charge. It  
17 was pointed out that the Recreation Commission could decide to put a soccer field thus it  
18 could end up being another Brickyard situation. Att. Prolman said that open space  
19 ownership has to be one or the other - homeowner's association or homeowners together  
20 in which case there is no public access; or conveyed to the Town or the third party, a  
21 conservancy type group. As far as public access...it is private ownership but we the  
22 community go use your land? It is a nightmare to try to insure.

23  
24 The language mutually agreed upon may be deeded to the Town - add or a third party  
25 nonprofit acceptable to the Planning Board. In other words, a public entity with a track  
26 record of stewardship, not an individual.

27  
28 K. 5 - Attorney Prolman suggested checking with the Town attorneys because the  
29 Attorney General approves subdivisions but he is not certain they approve open space  
30 developments.

31  
32 Back to E.4 - Mrs. McKibben questioned where it says "unless an acceptable alternative  
33 for fire safety, as determined by the Fire Chief", she feels that language is kind of open  
34 ended. This was will be reviewed.

35  
36 All in all, Mr. Wagner said he needs to make sure the ordinance conforms to the CTAP  
37 grant for conservation subdivisions. He will be reviewing the ordinance closely and then  
38 Town Counsel should review it before going to hearings. Mr. Ducharme will prepare  
39 another draft for review at the next meeting.

40  
41 **Pinecreek** - Chairman Douglas told the Board that she has been going back and forth  
42 regarding the fire sprinkler system on the single home for Ashwood. The last time she  
43 spoke with Kevin (Lynch) he was going to talk with De Zielinski regarding a third party  
44 inspection and since Attorney Prolman represents Ashwood Companies she asked him  
45 for an update.

Att. Prolman reported the last he heard was Kevin is satisfied with the proposed system and had chosen a third party fire inspector...which is okay with his client. There are some driveway issues. Att. Prolman said he appreciates the Chair's help in this matter and he would follow-up with his client. He left the meeting at 8:29 p.m.

### **3. RESIDENTIAL DRIVEWAY REGULATION & PERMIT**

Mr. Steve Perry said Kevin (Lynch) agrees with the regulation and that he had reviewed it with Steve Wagner. Mr. Wagner said that after reviewing the minutes there are a couple of things that still need to be changed that he had missed. These will be corrected and also there is one item to be changed on the permit form. The permit fee is set at \$25.00.

**200.00 DEFINITIONS** were reviewed. At Mr. Wagner's request, the Board agreed not to number the definitions individually but rather just include them all under Section 200 with no subsections. It was agreed to keep in the definitions **Alter/Alteration**.

**Roadway, Private** - Mr. Wagner: When you say access, frontage and right-of-way you have to be thinking about public roads and private roads and make sure you allow for what you are intending to allow...the way your access and frontage read it sounds like that we can pull out private roads and we do not have an issue with frontage.

The language "is offered to the Town of Litchfield for acceptance as a Town road" is questionable because private roads are not accepted by the Town.

Mrs. McKibben: Why would you offer it to the Town?

This was discussed and it was suggested using the language in the Older Persons development. It was agreed to delete is offered to the Town of Litchfield for acceptance as a Town road (whether or not it is accepted) and keep "is guaranteed to remain open in perpetuity" and delete the remaining sentence.

Mr. Perry **MOTIONED** to move to Public Hearing on October 20, 2009, the changes we have done through subdivision regulations Definitions 200, Appendix F of the Fee Schedule and Appendix J Residential Driveway Regulations & Permit. Mr. Ducharme seconded. Motion carried 5-0-0.

### **4. CTAP FUNDED ORDINANCE**

Mr. Wagner said he did not have a draft; he is still doing research on workforce housing.

### **5. OLD STAGE CROSSING - ESCROW RELEASE**

Mrs. McKibben said there is \$26,000 in an escrow account posted by the original owner. This was discussed. Mr. Perry asked if the money actually goes to Cooper Development

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or Lamontagne Builders. Mr. Perry pointed out usually when subdivisions are sold off it includes all of the assets. Mrs. McKibben will research the matter and get back to the Board.

**Escrow Accounts** - On another matter, Mrs. McKibben will provide for the next meeting a list of the escrow accounts to see if any could be closed out.

**ANY OTHER BUSINESS**

**2010 Budget** - Chairman Douglas informed the members she had presented the budget to the Selectmen on Monday night. The Selectmen approved the aerial survey money. Mr. Jayson Brennen was present at the meeting to explain the survey and he would also be attending the Budget Committee meeting.

There being no further business, Chairman Douglas **MOTIONED** to adjourn the meeting. Mr. Fuertes seconded. Motion carried 5-0-0. The meeting adjourned at 9:17 p.m.

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Alison Douglas, Chairman

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Edward Almeida, Vice Chairman

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Marc Ducharme, Clerk

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Carlos Fuertes

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Steve Perry, Selectman

Lorraine Dogopoulos  
Recording Secretary